

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Prosecution,

v.

JUSTIN EVERETT CRUTCHFIELD,

Defendant.

Case No. 5:14-cr-00051-DLJ (PSG)

**ORDER GRANTING-IN-PART
GOVERNMENT'S EX PARTE
MOTION TO STAY COMPLIANCE
DATE AND DISCLOSE TO U.S.
DEFENDANT'S RULE 17(C)
SUBPOENAS TO UNKNOWN THIRD
PARTIES**

(Re: Docket No. 37)

The court has before it a motion by the government requesting three forms of relief:

(1) disclosure of copies of a group of subpoenas issued pursuant to an ex parte application by Defendant Justin Crutchfield; (2) a temporary stay of the date of compliance of those subpoenas and (3) a reasonable time in which to file a motion to quash the subpoenas on behalf of the victims.¹ Crutchfield opposes each of these requests, arguing that the subpoenas were properly

¹ See Docket No. 37.

1 issued and the government is not entitled to review them.² Crutchfield further argues that the
 2 government does not have standing to object to or quash the subpoenas at issue.³ Based on the text
 3 and advisory notes of the Rule in question, government's motion is GRANTED, but only IN-
 4 PART.

5 Federal Rule of Criminal Procedure 17 provides a mechanism for the court to issue
 6 subpoenas compelling the production of documents, witnesses or objects for use in a federal
 7 criminal proceeding.⁴ This district's Criminal Local Rule 17-2(a)(1) clarifies that, with good
 8 cause, a party may request a Rule 17 subpoena by an "ex parte motion without advance notice to
 9 the opposing party."⁵ Subsection (c)(3) of Rule 17 puts additional protections in place for the
 10 personal or confidential information of victims:

12 After a complaint, indictment, or information is filed, a subpoena requiring the
 13 production of personal or confidential information about a victim may be served on
 14 a third party only by court order. Before entering the order and unless there are
 15 exceptional circumstances, the court must require giving notice to the victim so that
 the victim can move to quash or modify the subpoena or otherwise object.⁶

16 The government argues that because notice was not provided to the victims before the
 17 issuance of the subpoenas before the court, these protections were violated.⁷

18 As a preliminary matter, the court notes that the Federal Crime Victims' Rights Act, which
 19 prompted the adoption of Rule 17(c)(3),⁸ specifically allows the attorney for the government to

22 ² See Docket No. 38.

23 ³ See Docket No. 38 at 5.

24 ⁴ See Fed. R. Crim. P. 17.

25 ⁵ Crim. L.R. 17-2(a)(1).

26 ⁶ See Fed. R. Crim. P. 17.

27 ⁷ See Docket No. 37 at 5-6.

1 assert the rights it created.⁹ It even goes so far as to impose an affirmative obligation on the
 2 prosecutor to make their best efforts to ensure that victims' rights are protected.¹⁰ In light of this
 3 history, although the protections afforded by Rule 17(c)(3) are not specifically bestowed by the
 4 Crime Victims' Rights Act, the court finds that the standing bestowed by the statute extends to
 5 derivative rules created to ensure its application. The government has sufficient standing to
 6 challenge the subpoenas.

7
 8 However, the government is mistaken about Rule 17(c)(3)'s notice requirements.
 9 The rule does not require notice to the victim in cases of "exceptional circumstances." The
 10 advisory committee notes to Rule 17(c)(3) make clear that "exceptional circumstances"
 11 include instances in which "the defense would be unfairly prejudiced by premature
 12 disclosure of a sensitive defense strategy." At the hearing on this motion, defense counsel
 13 indicated that disclosure of the information would result in such unfair prejudice here.
 14 Indeed, in the application for the subpoenas, counsel specifically requested that the
 15 applications be sealed in order to "prevent the defense from being forced to reveal its trial
 16 strategy to the prosecution," and offered to provide additional information on that matter if
 17 the court required it. The court made no such request, as its attention had not yet been
 18 directed to Rule 17(c)(3).

19
 20 In light of the motion before the court, and the "exceptional circumstances"
 21 standard, more information is required. The government's request to participate in the
 22

23 ⁸ See Advisory Committee Notes to Fed. R. Crim. P. 17 ("This amendment implements the Crime
 24 Victims' Rights Act, codified at 18 U.S.C. § 3771(a)(8)"); *see also United States v. McClure*, Case
 No. 08-cr-100-WBS, 2009 WL 937502 at n.2 (E.D. Cal. Apr. 7, 2009).

25 ⁹ See 18 U.S.C. § 3771(d)(1) ("The crime victim or the crime victim's lawful representative, and
 26 the attorney for the Government may assert the rights described in subsection (a)").

27 ¹⁰ See 18 U.S.C. § 3771(a).

process of determining whether exceptional circumstances are present is denied. The advisory committee notes to Rule 17 specifically “leave[] to the judgment of the court a determination as to whether the judge will permit the question whether such exceptional circumstances exist to be decided ex parte and authorize service of a third-party subpoena without notice to anyone.”¹¹ The Northern District of California’s local rules provide yet more guidance, allowing a party with good cause to request a Rule 17 subpoena by an “ex parte motion without advance notice to the opposing party.”¹² This district has held that good cause exists where a party would be forced to reveal trial strategy to meet the required standard.¹³ That is precisely the situation here. Rule 17(c)(3)’s “exceptional circumstances” standard, which must be met for Crutchfield to forego notifying the victims about the subpoenas, can be met by showing that providing such notice would reveal the defense’s trial strategy. Presumably, the proffers in support of such a showing will tell the court about that trial strategy, such that if the government were permitted to participate, it too would become privy to the defense’s game plan. Good cause therefore exists to exclude the government from this determination.

Finally, as a matter of pure common sense, the entire purpose of the “exceptional circumstances” examination/consideration/determination/showing is to avoid the notice requirements otherwise imposed by Rule 17(c)(3). It could have and perhaps should properly have taken place before these subpoenas ever issued. In any event, to allow the

¹¹ See Advisory Committee Notes to Fed. R. Crim. P. 17.

¹² Crim. L.R. 17-2(a)(1).

¹³ See *United States v. Johnson*, Case No. 3:94-cr-0048 SBA, 2008 WL 62281, at *2 (N.D. Cal. Jan. 4, 2008) (“A defendant may apply ex parte for a subpoena duces tecum for the pre-trial production of documents by a third party where he is unable to make the showing required for such a subpoena without revealing trial strategy.”).

1 government and victims to participate now in an analysis designed to keep them from
 2 finding out about the subpoenas in the first place would defeat the very purpose of the
 3 evaluation.

4 In sum, the court rules on the government's requests as follows. The government's
 5 request for disclosure of the subpoenas is denied without prejudice to renewal after the
 6 court has resolved the "exceptional circumstances" issue. The request for a temporary stay
 7 of the date of compliance is granted. Finally, the request for a reasonable time in which to
 8 bring a motion to quash is denied without prejudice to renewal also pending resolution of
 9 the "exceptional circumstances" question. Defense counsel shall submit an ex parte brief to
 10 the court by Tuesday, June 17, outlining the exceptional circumstances that justify
 11 foregoing Rule 17(c)(3)'s notice requirements. Upon reviewing the evidence presented in
 12 camera, the court will make a final determination.¹⁴

13
 14 The government has informed the court that it intends to seek an appeal of the
 15 court's decision to conduct the exceptional circumstances analysis ex parte. So far as this
 16 court is aware, that is the only issue to be submitted for appeal at this time. Pursuant to
 17 Fed. R. Crim. P. 59(a), the government shall have fourteen days to file that appeal.
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 19

20 ¹⁴ The government argues that even if Rule 17(c)(3) were satisfied, Cal. Welf. & Inst. Code § 827
 21 would preclude the defense from obtaining the information sought. However, that section
 22 specifically provides that a minor's personal information may be disclosed to "the attorneys for the
 23 parties . . . who are actively participating in criminal or juvenile proceedings involving the minor."
 24 Cal. Welf. & Inst. Code § 827. Section 827.9 further provides that Section 827 "does not govern
 25 the release of police records involving a minor who is the witness to or victim of a crime who is
 26 protected by other laws including, but not limited to," various state laws. Of the non-exclusive list
 27 of statutes provided, only one speaks to the issue of crime victims' confidentiality, and that statute
 28 also contains an exception for defense counsel in a criminal matter to obtain the records necessary
 to prepare its case. See Cal. Penal Code § 841.5 ("Nothing in this section shall impair or interfere
 with the right of a defendant to obtain information necessary for the preparation of his or her
 defense through the discovery process."). Section 827 therefore does not preclude a defendant in a
 criminal case from obtaining information about the chief witnesses against him, even if they are
 minors.

IT IS SO ORDERED.

Dated: June 6, 2014



PAUL S. GREWAL
United States Magistrate Judge

United States District Court
For the Northern District of California